

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kyle Hendricks

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

N.Y.C. Dept of Corrections

Sick Call

Doctor Calvo

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff's Name Kyle Hendricks
ID# 241-09-12885
Current Institution _____
Address _____

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name N.Y.C. Dept of Corrections Shield # _____
Where Currently Employed 60 Hudson Street
Address 60 HUDSON STREET, NEW YORK, NEW YORK
10013-1007

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/2/11

**AMENDED
COMPLAINT**

under the Civil Rights Act,
42 U.S.C. § 1983

Jury Trial: ☒ Yes ☐ No
(check one)

11 Civ. 1206 (LAP)

Defendant No. 2 Name SICK CALL Shield # _____
Where Currently Employed O.B.C.C
Address 16-00 HAZEN STREET, EAST ELMHURST
QUEEN N.Y. 11370

Defendant No. 3 Name DOCTOR CALVO Shield # _____
Where Currently Employed O.B.C.C
Address 16-00 HAZEN STREET, EAST ELMHURST
QUEEN N.Y. 11370

Who did
what?

Defendant No. 4 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 5 Name _____ Shield # _____
Where Currently Employed _____
Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur? AT O.B.C.C
16-00 HAZEN STREET, EAST ELMHURST QUEEN, N.Y. 11370

B. Where in the institution did the events giving rise to your claim(s) occur?
THIS OCCUR AT O.B.C.C / C.P.S.U 2500 SOUTHWEST 32 CELL

C. What date and approximate time did the events giving rise to your claim(s) occur?
THIS OCCUR 12-23-10 TELL NOW

D. Facts: YES MY NAME IS KYLE HENDRICKS B.C.# 241-09-12885 AND I
HAVE BEEN VIOLATED BY SICK CALL OF MY 5 AMENDMENT, 6 AM-
ENDMENT, 7 AMENDMENT, 8 AMENDMENT, OF MY CONSTITUTIONAL
RIGHTS AT O.B.C.C / C.P.S.U 2500 SOUTHWEST AREA, DOCTOR CALVO

What
happened
to you?

AS WELL AS HIS WHOLE ENTIRE MEDICAL STAFF HAVE
 REPEATLY DISMISS MY MEDICAL STAFF HAVE REPEATLY DISMISS
 MY MEDICAL REQUEST AND COMPLAIN ON SEVERAL AND NUMEROUS
 OCCASIONS. SEVERAL AND NUMEROUS OCCASIONS. SEVERAL TIME
 IN THE PAST DR. CALVO HAS DENIED ME ADEQUATE MEDICAL ATTENTION
 AND HAS ALSO ORDERED HIS STAFF TO NOT ASSIST ME. WHEN I OUTRIGHT
 DENIED. THEN (THIS DOCTOR ORDERED) HIS STAFF NOT TO ASSIST
 ME IN ANY MATTERS THAT I HAD COME TO SICK CALL FOR.
 THE NEW YORK CITY DEPARTMENT OF CORRECTIONS HAS FAILED
 TO ADHERE TO ITS POLICIES REGARDING SICK CALL ITS
 MEDICAL STAFF SICK CALL PROCEDUR, ~~SEEK~~ ~~SEEK~~ ~~SEEK~~
 @ RIGHTS OF PRISONERS SEEKING MEDICAL ATTENTION
 AND ~~SEEK~~ OVERSEEING THE PRISONER HEALTH SERVICES
 NEGLECTFULLY AND DELIBERATELY. ALL DEFENDANTS
 HAVE SHOWN DELIBERAT INDIFFERENCE FOR THEIR FAILURE
 TO FAILURE TO ACT.

Was
 anyone
 else
 involved?

Who else
 saw what
 happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

BACK PAIN, NECK PAIN, SHOULDER PAIN ETC.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

AT O.B.C.C CORRECTIONAL FACILITY

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☐ Do Not Know ☒

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

I FILED A GRIEVANCE AT THE O.B.C.C CORRECTIONAL FACILITY

1. Which claim(s) in this complaint did you grieve?

CALLS REFUSING ME MY MEDICAL TREATMENT VIOLATING MY 5, 6, 7, & AMENDMENT

2. What was the result, if any?

NO NOTHING NO RESULT

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

~~NO STEPS~~ I WROTE A GRIEVANCE AND THE DEPUTY WARDEN

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). I AM ~~SEEKING~~ SEEKING THE AMOUNT OF TEN MILLION DOLLARS FOR MY SUFFERING THAT WILL LAST A LIFE TIME. I AM ALSO SEEKING THIS AMOUNT TO BE PAID BY DOCTOR CALVO, IN HIS PROFESSIONAL CAPACITY & PERSONAL CAPACITY, ~~THE~~ ~~AMOUNT OF 50% OF THE REQUESTED~~ IN PORTION OF 50% OF THE REQUESTED DEMAND AMOUNT AS A PUNITIVE AWARD. I AM ALSO REQUESTING THAT THE NEW YORK CITY DEPARTMENT OF CORRECTIONS ASSIST IN PAYMENT OF THE DEMAND IN AMOUNT OF 50%. DUE TO THEIR DELIBERATE IN DIFFERENCE.

On
these
claims

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No ____

B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ____ No ____

D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____
If NO, give the approximate date of disposition _____
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5 day of February, 2011.

Signature of Plaintiff

Inmate Number

Institution Address

Kyle Hendricks
KYLE HENDRICKS
241.09.12885
18-18 HAZO STREET
EAST RULUR ST N.Y.
11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 5 day of FEBRUARY, 2011, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Kyle Hendricks

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/9/2011

KYLE HENDRICKS,

Plaintiff,

-against-

N.Y.C. DEPT. OF CORRECTIONS; SICK CALL;
DOCTOR CALVO,

Defendants.

ORDER TO AMEND

11 Civ. 1206 (LAP)

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff, currently incarcerated at Rikers Island, brings this *pro se* action, under 42 U.S.C. § 1983, alleging that Defendants failed to provide adequate medical care. Plaintiff alleges that since December 23, 2010, Defendant Doctor Calvo and his medical staff have dismissed his repeated complaints and requests in violation of his constitutional rights. The Court grants Plaintiff's request to proceed *in forma pauperis*. The Court further directs Plaintiff to submit an Amended Complaint within sixty (60) days of the date of this Order as detailed below.

STANDARD OF REVIEW

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint, or portion thereof, that states a frivolous or malicious claim, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b) and § 1915(e)(2)(B); see Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007). While the law authorizes dismissal on any of these grounds, district courts "remain obligated to construe a *pro se* complaint liberally." Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009). Thus, *pro se* complaints should be read with "special solicitude" and should be interpreted to raise the "strongest [claims] that they suggest." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006) (citations omitted).

ORDER MAILED BY PRO SE OFFICE ON 3/9/11

DISCUSSION

A. Section 1983 Claims

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Inadequate Medical Care

Plaintiff's claim that he was refused medical care implicates his rights under the Due Process Clause of the Fourteenth Amendment. Caiozzo v. Koreman, 581 F.3d 62, 69 (2d Cir. 2009). To establish a claim of inadequate medical care under the Fourteenth Amendment, a plaintiff must show "deliberate indifference to a serious medical condition." Id. at 72. The standard for deliberate indifference under the Due Process Clause of the Fourteenth Amendment is the same as under the Eighth Amendment. Id. at 70. A plaintiff must establish both objective and subjective components: (1) he had a serious medical condition and (2) it was met with deliberate indifference. Id. at 72.; see Farmer v. Brennan, 511 U.S. 825, 834-35 (1994); Estelle v. Gamble, 429 U.S. 97 (1976); Hathaway v. Coughlin, 37 F.3d 63, 66-68 (2d Cir. 1994).

Plaintiff alleges that Defendants dismissed his numerous complaints and requests, but he fails to allege facts sufficient to show deliberate indifference. Therefore, he is directed to submit an Amended Complaint to provide facts showing that he had sufficiently serious medical condition and that Defendants deliberately delayed, denied or interfered with needed medical care. Plaintiff must name as Defendants the individuals who were directly involved with, had knowledge of, or were responsible for his inadequate medical care. He should also detail all efforts on his part to obtain medical care.

C. Leave to Amend

Plaintiff is granted leave to amend his Complaint to detail his claim of inadequate medical care. First, Plaintiff must name as the defendant(s) in the caption¹ and in the statement of claim those individuals who were allegedly involved in the deprivation of his federal rights. If Plaintiff does not know the name of a defendant, he may refer to that individual as “John Doe” or “Jane Doe” in both the caption and the body of the Complaint.² The naming of John Doe defendants, however, does *not* toll the three-year statute of limitations period governing this action and Plaintiff shall be responsible for ascertaining the true identity of any “John Doe” defendants and amending his Complaint to include the identity of any “John Doe” defendants before the statute of limitations period expires.

Second, in the statement of claim, Plaintiff must provide a short plain statement of the relevant facts supporting each claim against each defendant named in the Amended Complaint. To the greatest extent possible, Plaintiff’s Amended Complaint must:

- (a) give the names and titles of all relevant persons;
- (b) describe all relevant events, stating the facts that support Plaintiff’s case including what each defendant did or failed to do;
- (c) give the dates and times of each relevant event or, if not known, the approximate date and time of each relevant event;
- (d) give the location where each relevant event occurred;
- (e) describe how each defendant’s acts or omissions violated Plaintiff’s rights and describe the injuries Plaintiff suffered; and

¹ The caption is located on the front page of the Complaint. Each individual defendant must be named in the caption. Plaintiff may attach an additional page if there is not enough space to list all of the defendants in the caption. If Plaintiff needs to attach an additional page to list all defendants, he should write “see attached list” on the first page of the Amended Complaint. Plaintiff must name all defendants in the caption and the statement of claim.

² For example, a defendant may be identified as: “Correction Officer John Doe #1 on duty August 31, 2010, at Sullivan Correctional Facility, during the 7-3 p.m. shift.”

(f) state what relief Plaintiff seeks from the Court, such as money damages, injunctive relief, or declaratory relief.

Essentially, the body of Plaintiff's Amended Complaint must tell the Court: who violated his federally protected rights; what facts show that his federally protected rights were violated; when such violation(s) occurred; where such violation(s) occurred; and why Plaintiff is entitled to relief. Plaintiff's Amended Complaint will completely replace, not supplement, his original Complaint.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket. Plaintiff is directed to file an Amended Complaint containing the information specified above. The Amended Complaint must be submitted to this Court's *Pro Se* Office within sixty (60) days of the date of this Order, be captioned as an "**AMENDED COMPLAINT**," and bear the same docket number as this Order. An Amended Civil Rights Complaint form is attached to this Order, which Plaintiff should complete as specified above. No summons will issue at this time. Once submitted, the Amended Complaint will be reviewed for substantive sufficiency, and then, if proper, the case will be reassigned to a district judge in accordance with the procedures of the Clerk's Office. If the case is reassigned, a copy of this Order will be served with the Summons and Amended Complaint. If Plaintiff fails to comply within the time allowed, and cannot show good cause to excuse such failure, the Complaint will be dismissed.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED:

MAR 09 2011

Dated:

New York, New York


LORETTA A. PRESKA
Chief United States District Judge